

MISSOURI COURT OF APPEALS WESTERN DISTRICT

SHAWN STEVENS,

Appellant,

v.

**MARKIRK CONSTRUCTION, INC., KIRK JONES and DAMAR DEVELOPMENT,
INC.,**

Respondents.

DOCKET NUMBER WD75532

Date: January 21, 2014

Appeal from:
Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:
Division Three: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Gary D. Witt, Judges

Attorneys:
Margaret D. Linberry, Kansas City, MO, for appellant.
Derek H. Mackay and David R. Buchanan, Kansas City; Patrick A. Bousquet, St. Louis, MO and Joseph S. Gall, Independence, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

SHAWN STEVENS

Appellant,

v.

MARKIRK CONSTRUCTION, INC., KIRK JONES and DAMAR DEVELOPMENT, INC.,

Respondents.

WD75532

Jackson County

Before Division Three: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Gary D. Witt, Judges

Shawn Stevens appeals from the circuit court's judgment entered upon a jury verdict in favor of Markirk Construction, Inc. and Damar, Inc. on Stevens's claim for fraudulent misrepresentation. Stevens contends the circuit court erred in refusing to submit his proposed verdict directing instruction.

REVERSED AND REMANDED.

Division Three holds:

While the general intent standard necessary to sustain a claim of fraudulent misrepresentation is the speaker's knowledge of the falsity of the representation or ignorance of its truth, where the misrepresentation is a promise of future conduct, a showing of intent not to perform at the time the promise was made is required. The circuit court found the alleged misrepresentation at issue in this appeal to be a promise of future conduct and, thus, instructed the jury on the more stringent scienter

requirement. Stevens, however, pled and presented the alleged misrepresentation as one of existing fact. Thus, Stevens was entitled to have the jury instructed on the general scienter requirement, and the court erred in failing to give his requested instruction. The judgment is reversed and the cause is remanded for a new trial.

Opinion by: Lisa White Hardwick, Judge

January 21, 2014

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